

Plain Language Overview of the California Environmental Protection Agency Voluntary Disclosure Policy

The California Environmental Protection Agency (Cal/EPA) issued its "Recommended Guidance on Incentives for Voluntary Disclosure" in October of 2003. This Guidance is designed to encourage "regulated entities to prevent or to discover voluntarily, disclose, and correct violations of federal, state and local environmental requirements through the use of routine, systematic application of an environmental compliance auditing program." The Guidance **defines** the terms "environmental audit" and "gravity based penalties", provides **incentives** to conduct environmental audits and self-disclose violations and lists **conditions** that must be met for the Guidance to apply.

Voluntary Disclosure Guidance-Definitions

"Environmental Audit" is a systematic, documented, periodic, and objective review by regulated entities of facility operations and practices related to meeting environmental requirements.

"Gravity based penalties" are that portion of a penalty over and above the economic benefit gained by noncompliance, whether or not they are labeled that way. In other words, the punitive portion of the penalty is the gravity based part.

Incentives-Why a Company Would Do Environmental Audits

The major incentives to encourage self-audits, prompt disclosure, and correction may include: significantly reducing or not seeking gravity based civil penalties, declining to refer for criminal prosecution companies that self-report, and refraining from routine requests for audits.

Conditions FOR A Voluntary Self-Disclosure to Reduce Penalties

1. The violation was discovered through an environmental audit or other objective, documented, **systematic** procedure or practice reflecting the regulated entity's due diligence in preventing, detecting, and correcting violations.
2. The violation was discovered **voluntarily** and not due to a legal mandate.
3. The disclosure must be **prompt** and in writing, no more than 21 days after the violation is discovered.
4. The disclosure must be **independent**, meaning it is not made in reaction to a pending government enforcement action or third party complaint.

5. The violation was **corrected immediately**.
6. The violator agrees to **prevent recurrences**.
7. The violation (or similar violation) must not have occurred at the same facility within the past three years.
8. The violation is **not serious**, meaning it did not cause actual harm, present an imminent or substantial endangerment to, human health or the environment, or violate the specific terms of any judicial or administrative order, or consent agreement.
9. The violator **fully cooperated** with the regulatory agency.

Note: For information only. Nothing in this modifies the Cal/EPA "Recommended Guidance on Incentives for Voluntary Disclosure," dated October of 2003.